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PART II:

ENVIRONMENTAL PROTECTION AGENCY

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MARINE SANITATION DEVICES

Standards of Performance

Title 40—Protection of Environment

[FRL 480-8]

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—WATER PROGRAMS

PART 140—MARINE SANITATION DEVICE STANDARD

Performance Standards

These regulations replace 40 CFR 140 and establish Federal standards of performance for marine sanitation devices as initially required by section 13 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1163.

The Administrator of the Environmental Protection Agency (EPA) on June 23, 1972, promulgated Federal standards of performance for marine sanitation devices (40 CFR 140), which provided for no overboard discharge of sewage into the navigable waters of the United States. An incentive provision was included in the regulation, stating that boat owners who install on existing vessels a device providing certain specified primary treatment and disinfection, prior to the effective date of the standards, would be considered to be in compliance with the standards for a period of time after the effective date. Permitting the installation of primary treatment devices was done to obtain the maximum amount of immediate pollution abatement during the period required for the widespread installation of pump-out facilities.

In October 1972 the Federal Water Pollution Control Act (the Act) was extensively amended. Section 13 was carried over into section 312 of the Act, as amended, with no substantial changes other than revisions to section 312(f). Revised language in section 312(f) of the Act addressed actions that the Administrator must consider in allowing for the complete prohibition of vessel discharge in certain specified waters in response to applications for such prohibition by States. Section 312(f)(2) provides for early preemption of existing State laws when a vessel becomes in compliance with Federal standards and regulations. Under this section, a vessel equipped with a marine sanitation device which met the standards created by the Act and the regulations thereunder, after January 30, 1975 (the date on which the initial standards and regulations were promulgated, see the following paragraph) and before the compliance deadlines for new and existing vessels, would be in compliance with Federal law. This would include vessels meeting the incentive provisions discussed above. Section 312(f)(3) provides that if a State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection than the Federal standards provide, the State may completely prohibit the discharge of vessel sewage if the Administrator determines that adequate facilities for pump out and treatment of vessel sewage from all vessels are reasonably available. Section 312(f)(4) provides that the Administrator may, by regulation, prohibit vessel discharge in order to protect and enhance the quality of specified waters.

It is noted that section 312(f) of the Act provides mechanisms whereby an individual State can achieve a no-discharge standard for some or all of its waters. Under section 312(f)(3) a State may enforce its no-discharge regulations upon the Administrator's finding that adequate pump-out and treatment facilities are reasonably available for all vessels using such waters. A petition by a State and a subsequent determination by the Administrator that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the subject waters permits the State, through its regulations prohibiting the overboard discharge of sewage to preempt Federal marine sanitation device standards for the specified waters. Under section 312(f)(4) certain sensitive waters, such as marinas, drinking water intakes, areas of intensive primary water contact recreation, and shellfish beds, may be made no-discharge waters by EPA regulation if it is determined that the protection and enhancement of the quality of such waters require such protection. Petitions under section 312(f)(3) and section 312(f)(4) have been received from several States and the Agency has taken action on such petitions following publication of notices of their receipt and appropriate periods for public comment. Such actions have been taken since section 312(f)(2) provides for an immediate effective date of compliance with Federal marine sanitattion device standards for any vessel complying with the Federal treated effluent discharge portion of the standard after January 30, 1975 and before the statutory compliance deadlines for new and existing vessels.

Interested parties were notified of the opportunity to participate in this rule making proceeding by a notice of proposed rule making published in the FEDERAL REGISTER on October 10, 1975 (40 FR 47972). Approximately 140 comments were reecived. Except as noted and discussed in the following paragraphs, the proposed regulations have been adopted without substantive changes.

Comment letters were received from approximately 56 individuals supporting the proposed marine sanitation device standard and from approximately 40 individuals criticizing the proposed standard. A substantial number of those criticizing the proposed standard were from the Great Lakes area.

One comment suggested that the word "volatile" be inserted before "suspended solids" in the last sentence under § 140.3(d). The testing procedure as it is conducted by the U.S. Coast Guard provides for a net suspended solids determination and the change was not believed necessary.

Comments were received that a definition of the term "navigable waters" should be added to the regulation because of confusion relating to the use of the term in § 140.3. The word "navigable" has been deleted in favor of language in Pub. L. 92-500, which defines the waters to which this regulation applies.

One commenter stated that the proposed revision in the marine sanitation device standard was inconsistent with its alleged rationale in that the preamble to the proposed rule making stressed that the water bodies requiring the highest degree of protection are those with relatively long detention periods, whereas the discriminator for the standard is the ability for ingress or egress rather than detention time. The letter points out that Lake Michigan has a detention period of many years. Admittedly, there are environmental exceptions to almost every rule. As a general thesis, the Agency does not believe that the statements contained in the preamble to the proposed rule are inaccurate. The majority of inland lakes where ingress and egress by vessels subject to this regulation are impossible have long detention periods. Exceptions to such a statement are the Great Lakes. However, the Agency at the present time has not been made aware of sufficient water quality problems which would dictate making the entire Great Lakes chain subject to a no-discharge standard.

Several commenters recommended that provision be made for State laws or regulations which are more stringent than the Federal standard to remain in force. Such action would be contrary to the provisions of § 312 of Pub. L. 92-500 and such section clearly provides that State no-discharge laws may prevail when appropriate action is taken under § 312(f).

One comment was received that § 140.5 be revised to show that analytical methods which are to be used to show compliance to this regulation be those methods promulgated by the Administrator in 40 CFR 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants." This change would provide uniformity in testing procedures among all EPA regulations and § 140.5 has been modified to accommodate the suggested change.

Table 1 provides a summary of the Federal marine sanitation device standard as it is being promulgated.

TABLE 1.—*Summary of marine sanitation device standard*

Type of water	Vessel type	Must be equipped with a—	Except when the vessel is equipped—
No discharge. Freshwaters not subject to ingress or egress by vessel traffic or navigation by interstate vessel traffic.	Existing. A vessel whose construction was initiated before Jan. 30, 1975.	Coast Guard certified no-discharge type device or a Coast Guard certified discharge type device which is secured to prevent the discharge of sewage on and after Jan. 30, 1980.	On or before the date of promulgation of this regulation with a Coast Guard certified discharge type device from which the effluent will not have a fecal coliform bacterial count of greater than 1,000/100 ml nor visible floating solids. Such a discharge type device may be used for its operable life.
	New. A vessel whose construction was initiated on or after Jan. 30, 1975.	Coast Guard certified no-discharge type device or a Coast Guard certified discharge type device which is secured to prevent the discharge of sewage on and after Jan. 30, 1977.	Do.
Treated effluent waters, including coastal waters, estuaries, the Great Lakes, freshwaters accessible through locks or navigable for interstate vessel traffic.	Existing. A vessel whose construction was initiated before Jan. 30, 1975.	Coast Guard certified discharge type device from which effluent will not have a fecal coliform bacterial count of greater than 1,000/100 ml nor visible floating solids on Jan. 30, 1980. On and after Jan. 31, 1980, the effluent from Coast Guard certified discharge type devices shall not have a fecal coliform bacterial count of greater than 200/100 ml not suspended solids greater than 150 mg/l.	On or before Jan. 30, 1978, with any Coast Guard certified discharge type device; that device may be used for its operable life. A Coast Guard certified discharge type device designed to produce effluent with a fecal coliform bacterial count not greater than 1,000/100 ml and no visible floating solids installed after Jan. 30, 1978, must be replaced by Jan. 31, 1980. The replacement device must be a discharge device of the type required on and after Jan. 31, 1980.
	New. A vessel whose construction was initiated on or after Jan. 30, 1975.	Coast Guard certified discharge type device from which effluent will not have a fecal coliform bacterial count of greater than 1,000/100 ml nor visible floating solids on Jan. 30, 1977. On and after Jan. 31, 1980, the effluent from Coast Guard certified discharge type devices shall not have a fecal coliform bacterial count of greater than 200/100 ml nor suspended solids greater than 150 mg/l.	Before Jan. 31, 1980, with a Coast Guard certified discharge type device from which the effluent will not have a fecal coliform bacterial count of greater than 1,000/100 ml nor visible floating solids. Such a discharge type device may be used for its operable life.

In consideration of the foregoing, Title 40, Part 140 of the Code of Federal Regulations is revised to read as follows:

Sec.
140.1 Definitions.
140.2 Scope of Standard.
140.3 Standard.
140.4 Complete prohibition.
140.5 Analytical procedures.

AUTHORITY: The provisions of this Part 140 are issued under sec. 312, as added October 18, 1872, Pub. L. 92-500 § 2, 86 Stat. 871. Interpret or apply sec. 312(b)(1), 33 U.S.C. 1322(b)(1).

§ 140.1 Definitions.

For the purpose of these standards the following definitions shall apply:

(a) "Sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes;

(b) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(c) "Marine sanitation device" includes any equipment for installation onboard a vessel and which is designed to receive, retain, treat, or discharge sewage and any process to treat such sewage;

(d) "Vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on waters of the United States;

(e) "New vessel" refers to any vessel on which construction was initiated on or after January 30, 1975;

(f) "Existing vessel" refers to any vessel on which construction was initiated before January 30, 1975;

(g) "Fecal coliform bacteria" are those organisms associated with the intestines of warm-blooded animals that are commonly used to indicate the presence of fecal material and the potential presence of organisms capable of causing human disease.

§ 140.2 Scope of Standard.

The standard adopted herein applies only to vessels on which a marine sanitation device has been installed. The standard does not require the installation of a marine sanitation device on any vessel that is not so equipped. The standard applies to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security.

§ 140.3 Standard.

(a)(1) In freshwater lakes, freshwater reservoirs or other freshwater impoundments whose inlets or outlets are such as to prevent the ingress or egress by vessel traffic subject to this regulation, or in rivers not capable of navigation by interstate vessel traffic subject to this regulation, marine sanitation devices certified by the U.S. Coast Guard (see 33 CFR 159, published in 40 FR 4622, January 30, 1975), installed on all vessels shall be designed and operated to prevent the overboard discharge of sewage, treated or untreated, or of any waste derived from sewage. This shall not be construed to prohibit the carriage of Coast Guard-certified flow-through treatment devices which have been secured so as to prevent such discharges.

(2) In all other waters, Coast Guard-certified marine sanitation devices installed on all vessels shall be designed and operated to either retain, dospose of, or discharge sewage. If the device has a discharge, subject to paragraph (d) of this section, the effluent shall not have a fecal coliform bacterial count of greater than 1,000 per 100 milliliters nor visible floating solids. Waters where a Coast Guard-certified marine sanitation device permitting discharge is allowed include coastal waters and estuaries, the Great Lakes and inter-connected waterways, fresh-water lakes and impoundments accessible through locks, and other flowing waters that are navigable interstate by vessels subject to this regulation.

(b) This standard shall become effective on January 30, 1977 for new vessels and on January 30, 1980 for existing vessels (or, in the case of vessels owned and operated by the Department of Defense, two years and five years, for new and existing vessels, respectively, after promulgation of implementing regulations by the Secretary of Defense under section 312(d) of the Act).

(c) Any vessel which is equipped as of the date of promulgation of this regulation with a Coast Guard-certified flow-through marine sanitation device meeting the requirements of paragraph (a)(2) of this section, shall not be required to comply with the provisions designed to prevent the overboard discharge of sewage, treated or untreated, in paragraph (a)(1) of this section, for the operable life of that device.

(d) After January 30, 1980, subject to paragraphs (e) and (f) of this section, marine sanitation devices on all vessels on waters that are not subject to a prohibition of the overboard discharge of sewage, treated or untreated, as specified in paragraph (a)(1) of this section, shall be designed and operated to either retain, dispose of, or discharge sewage, and shall be certified by the U.S. Coast Guard. If the device has a discharge, the effluent shall not have a fecal coliform bacterial count of greater than 200 per 100 milliliters, nor suspended solids greater than 150 mg/l.

(e) Any existing vessel on waters not subject to a prohibition of the overboard discharge of sewage in paragraph (a)(1) of this section, and which is equipped with a certified device on or before January 30, 1978, shall not be required to comply with paragraph (d) of this section, for the operable life of that device.

(f) Any new vessel on waters not subject to the prohibition of the overboard discharge of sewage in paragraph (a)(1) of this section, and on which construction is initiated before January 31, 1980, which is equipped with a marine sanitation device before January 31, 1980, certified under paragraph (a)(2) of this section, shall not be required to comply with paragraph (d) of this section, for the operable life of that device.

(g) The degrees of treatment described in paragraphs (a) and (d) of this section are "appropriate standards" for purposes of Coast Guard and Department of Defense certification pursuant to section 312(g)(2) of the Act.

(h) This section is not to be construed to accelerate the effective date of the standards and regulations promulgated under section 312 as such date affects the sales regulations for marine sanitation devices specified in section 312(g)(1): January 30, 1977, and January 30, 1980, for new and existing vessels, respectively.

§ 140.4 Complete prohibition.

(a) A State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into some or all of the waters within such State by making a written application to the Administrator, Environmental Protection Agency, and by receiving the Administrator's affirmative determination pursuant to section 312(f)(3) of the Act. Upon receipt of an application under section 312(f)(3) of the Act, the Administrator will determine within 90 days whether adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels using such waters are reasonably available. Applications made by States pursuant to section 312(f)(3) of the Act shall include: (1) a certification that the protection and enhancement of the waters described in the petition require greater environmental protection than the applicable Federal standard; (2) a map showing the location of commercial and recreational pump-out facilities; (3) a description of the location of pump-out facilities within waters designated for no discharge; (4) the general schedule of operating hours of the pump-out facilities; (5) the draught requirements on vessels that may be excluded because of insufficient water depth adjacent to the facility; (6) information indicating that treatment of wastes from such pump-out facilities is in conformance with Federal law; and (7) information on vessel population and vessel usage of the subject waters.

(b) A State may make a written application to the Administrator, Environmental Protection Agency, under section 312(f)(4) of the Act, for the issuance of a regulation completely prohibiting discharge from a vessel of any sewage, whether treated or not, into particular waters of the United States or specified portions thereof, which waters are located within the boundaries of such State. Such application shall specify with particularly the waters, or portions thereof, for which a complete prohibition is desired. The application shall include identification of water recreational areas, drinking water intakes, aquatic sanctuaries, identifiable fish-spawning and nursery areas, and areas of intensive boating activities. If, on the basis of the State's application and any other information available to him, the Administrator is unable to make a finding that the waters listed in the application require a complete prohibition of any discharge in the waters or portions thereof covered by the application, he shall state the reasons why he cannot make such a finding, and shall deny the application. If the Administrator makes a finding that the waters listed in the application require a complete prohibition of any discharge in all or any part of the waters or portions thereof covered by the State's application, he shall publish notice of such findings together with a notice of proposed rule making, and then shall proceed in accordance with 5 U.S.C. 553. If the Administrator's finding is that applicable water quality standards require a complete prohibition covering a more restricted or more expanded area than that applied for by the State, he shall state the reasons why his finding differs in scope from that requested in the State's application.

§ 140.5 Analytical procedures.

In determining the composition and quality of effluent discharge from marine sanitation devices, the procedures contained in 40 CFR 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants," or subsequent revisions or amendments thereto, shall be employed.

Dated: January 21, 1976.

JOHN QUARLES,
Acting Administrator.

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